IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 264 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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GULABBHAI NARBHERAM BRAHMKSHTRI & 1 - Applicant(s)
Versus
SMT. FIZABAI IBRAHIM - Opponent(s)

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Appearance :
MR ANAND L SHARMA for Applicant(s) : 1 - 2.
MR MI MERCHANT for Opponent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/02/2007

ORAL JUDGMENT

Gulabbhai Narbheram Brahmkshtri and others, petitioners, defendant-tenants, have filed this Revision Application under Section 29(2) of the

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the “Bombay Rent Act”) with a prayer that this Court may be pleased to quash and set aside the order dated 3.5.2006 passed by the District Court, Rajkot in Civil Appeal No. 95 of 1997 and judgement and decree dated 11.9.1997 passed in Regular Civil Suit No. 181 of 1991 by Small Causes Court, Rajkot.

2. The Revision Application was filed on 3.8.2006. When the matter was placed for hearing on 8.11.2006 this Court issued notice and stay was granted regarding possession.

3. Rule. Mr. M.I. Merchant, learned advocate , appears on behalf of the respondents and waives services of rule. He has submitted as under:

3.1 There is a premise situated in Rajkot city which is known as “Gujarati Bazar, Diwanpura Sheri No. 17, near Hareshchandra Cinema” (hereinafter referred as “the suit premises”). Ibrahimji Ismailji Vora, original plaintiff-landlord, filed Civil Suit No. 181 of 1991 in the Small Causes Court, Rajkot,and prayed to pass a decree against Gulabbhai Narbheram

Brahmkshtri, Dineshbhai Narbheram Brahmkshtri for obtaining vacant and peaceful possession of the premises from the defendants and also to recover due amount of Rs. 243.90 as claimed in para 5 of the plaint and also to get mesne profit of Rs. 56.40 ps. From the defendants. During the pendency of the plaint Shri Ibrahim Ismailji Vora died and his heirs Smt. Fizabai Ibrahim Vora and other heirs and legal representatives continued the suit. In the plaint it was stated that out of suit premises, a shop situated on the roadside was rented to the defendants in 1964 on monthly rent of Rs. 26/- per month exclusive of all taxes. Thereafter, the rent was increased from time to time. However, ultimately the plaintiffs filed a suit for possession on the following grounds:

(i) Nuisance and annoyance

(ii) Breach of Section 108(O) of the Transfer of Property Act;

(iii) Personal bona fide requirement and

(iv) Arrears of rent.

3.2 During the pendency of proceedings, the

Court Commissioner was appointed and Commissioner filed his report at Exh. 59. Report of the Commissioner is considered for the purpose of Section 108(O) of the Transfer of Property Act to show that the rented premise has been damaged. During the pendency of the proceedings, panchnama was also prepared at Exh. 73. Panchnama also supports the contention of the plaintiffs that the defendant has alternative suitable accommodation. The plaintiffs also examined independent witnesses at Exh. 74 Prabhat Karshanbhai, Exh. 75 Raghuvir Gadhvi, Exh. 76 Sabbir Razabali, and Exh. Yusufbhai to support the case of the plaintiffs.

4. The defendants have been duly served and appeared. They have filed their written statement at Exh. 24 denying the contention of the plaintiffs in connection with obtaining the suit premises in question. Before the trial Court the evidence both oral and documentary, was led and the trial Court by its judgement and order dated 11.9.1997 was pleased to hold the following:

4.1 The learned trial Judge held that the plaintiffs are entitled to get the suit premises on the grounds of nuisance and annoyance caused by the defendants.

4.2 He has further held that the plaintiffs have been able to prove that there was a short of premise to the plaintiffs. The plaintiffs have also proved that the plaintiffs are carrying on business in a very small area in which the plaintiffs cannot carry on their business with his brother. The learned trial Judge further held that the defendants have additional premises and if the defendants are ordered to vacate the suit premise then there would not be any undue hardship to the defendants because they have their own premise for their business purpose. The learned trial Judge has further held that the plaintiffs are able to prove their case for personal and bona fide requirement as per law and considering the facts of the case the learned trial Judge came to the conclusion that the plaintiffs are entitled to get a decree for possession of the suit premises as per law. The learned trial Judge has further held

that the defendants have got their own premise then they are required to vacate the suit premises as per law.

5. Being aggrieved by and dissatisfied with the said judgement and decree passed by the learned trial Judge on 11.9.1997, Civil Appeal No. 95 of 1997 was filed before the Court of Presiding Officer, Fast Track Court No. 2, Rajkot District, Rajkot by the defendants, namely, Gulabbhai Narbheram Brahmkshtri and Dineshbhai Narbheram Brahmkshtri, appellants - original defendants on 15.10.1997. The said appeal was heard by the learned Presiding Officer, Fast Track Court No. 2, Rajkot and the learned Judge was pleased to uphold the judgement and decree passed by the learned trial Judge passed in Regular Civil Suit No. 181 of 1991 and held that the same being proper, legal and valid, requires to be upheld. On that ground, ultimately the appeal was dismissed by order dated 3.5.2006.

6. Being aggrieved by and dissatisfied with the aforesaid judgement and order dated 3.5.2006 of the

learned Presiding Officer, Fast Track Court No. 2, Rajkot, in Civil Appeal No. 95 of 1997, the petitioners, appellants – original defendants, have filed this Revision Application before this Court on 3.8.2006.

7. It appears that thereafter, the respondent has filed darkhast No. 8 of 2006 before the Court and the Darkhast Court has issued notice dated 3.9.2006 to the petitioners here. The said proceedings were pending. Meanwhile, the Revision Application has been filed.

8. I have heard Mr. Anand Sharma, learned advocate for the petitioners and Mr. M.I. Merchant, learned advocate for the respondents. Mr. Sharma, learned advocate for the petitioners, has tried to assail the judgement and decree of the learned trial Judge as well as the appellate Court on the ground that both the Courts below have committed error of law as well as error of jurisdiction in coming to the conclusion.

9. On the other hand Mr. M.I. Merchant, learned advocate for the respondents has stated that when both the Courts have come to the conclusion regarding bona fide reasonable requirement, arrears of rent as well as nuisance and annoyance, these are question of facts and the petitioners were using the premises since 1964 after death of their father and the proceeding is going on and the suit has been filed in the year 1997 and after appreciating the evidence on record, the trial Court has come the conclusion that the plaintiffs have been able to prove the grounds which have been alleged in the plaint, namely, nuisance and annoyance, personal bona fide requirement. The appellate Court has also confirmed the said judgement and decree passed by the trial Court. Both the Courts below have given cogent and convincing reasons. Under Section 29(2) of the Bombay Rent Act, this Court has a very limited jurisdiction.

10. Mr. M.I. Merchant, learned advocate, has invited my attention to the judgement of the trial Court as well as the appellate Court and submitted that all the findings arrived at by the learned trial

Judge are based on appreciation of evidence on record and the learned trial Judge has discussed the evidence, both oral and documentary, on record and passed the decree in favour of the plaintiffs. Thereafter, the appellate Court also considered the findings of the learned trial Judge and held that the findings arrived at by the learned trial Judge are legal and valid. The learned advocate for the petitioners has not been able to show any error of law or any error of jurisdiction so that this Court can interfere with the findings of both the lower Courts, namely, appellate Court and the trial Court.

11. I have considered the facts and circumstances of the case. I have also considered the oral evidence produced by the plaintiffs. From the findings of the trial Court it appears that on behalf of the plaintiffs one witness Prabhat Karshanbhai was examined at Exh. 74 who is residing one kilometre away from the central jail and he has deposed before the Court that the defendant's shop is closed since last 20 to 25 days. This witness was examined on 1.8.1995. On behalf of the plaintiffs, another

witness Raghuvir Gadhvi was examined at Exh. 75 who is a rickshaw driver. This witness had stated on oath that he was running a rickshaw and he wanted to suggest before the Court that in the Popatpara main road, there is a shop of defendant No. 1 in which defendant No. 1 was carrying on the business. This witness also deposed before the Court that shop of defendant No. 1 remained closed since last 20 to 25 days and defendant No. 1 had put his kits in the other premises which came in the area of Popatpara. The above premises is of Prabhatbhai and as per the case of the plaintiffs, the defendants had put their all goods in the premises of Prabhatbhai.

12. The plaintiffs had also examined witness Sabbir Razabali at Exh. 76 who had stated in his deposition that his shop is situated in Gujari Bazar, Rajkot and the house of the plaintiffs is on the opposite side of the above witness. There is a distance of 20 feet between the house of the plaintiffs and the above witness. As per the say of this witness, defendant No. 1 is used to make wooden cradle and he is carrying on business of Sanghedia.

The above witness wanted to say that defendant No. 1 is using machines in the above premises and when the defendants used the machines then big noise came. This witness also wanted to suggest that the above machines were raising more and more noise and the defendant wanted to raise above noise for one hour or whole day from morning to evening and due to that there was a harassment in form of noise-pollution to the plaintiffs and his neighbouring persons. From the plaintiffs' side, another witness Yusufbhai was also examined at Exh. 77. This witness is also residing in Deewanpara Sheri No. 19 and in the said area there is a shop of the above witness. The house of the plaintiffs and the house of this witness is situated just opposite to each other. This witness stated that when the defendant used machineries for cutting the wooden then the noise of machinery would be more and they cannot talk with each other in the house. In the cross-examination of the plaintiffs, the plaintiffs stated that he is carrying on business of scooter repairing since more than 14 years and he is running his business in the rented shop. As per the case of the plaintiffs, rented shop

was taken by him as per rent note which is of dated 8.6.1963. The plaintiffs stated that the defendant was carrying on business as a Sanghedia and at the time of his deceased father, the above premises was given on rent to the defendants. The father of the plaintiffs is died on 15.5.1994 and at that time, the defendant was carrying on business in the Suit shop. Now as per the case of the plaintiffs, they wanted possession of the Suit property from the defendants.

13. I have considered the finding of the trial Court regarding passing of a decree, the Court has to consider bona fide and reasonable requirement of the plaintiffs and the defendants. There is a bona fide and reasonable requirement of the plaintiffs. As the landlord has been able to prove his bona fide and reasonable requirement, the plaintiffs are entitled to decree of possession. I have also considered the fact that if the defendants would vacate the suit premises then there would not be any undue hardship to the defendants because the defendants have their own premises for the business purpose. Hence this Court is of the view that if the defendants would

vacate the suit premises then it would be proper and justifiable. Hence the plaintiffs are entitled to get the suit premises on the ground of reasonable and bona fide requirement as per law.

14. I have considered the facts and circumstances of the case. I have also considered the findings of the learned trial Judge as well as the appellate Judge. I have also considered the oral and the documentary evidence led by the parties. The learned advocate for the petitioners has not been able to point out any ground that either the trial Court or the appellate Court has committed any error of law or error of jurisdiction. All the findings arrived at by the trial Court as well as the appellate Court are based on question of fact and also decision on appreciation of facts and evidence on record. In my view, therefore, under Section 29(2) of the Bombay Rent Act, this Court is of the view that the findings arrived at by the trial Court as well as the appellate Court are quite consistent with the facts of the case. Both the Courts below have given cogent and convincing reasons for passing a

decree in favour of the plaintiffs-landlord and this Court is of the view that the petitioners have not been able to show any error of law or jurisdiction and the findings of the learned trial Judge as well as the appellate Judge require to be confirmed. Accordingly, the findings of both the Courts below are confirmed.

15 Moreover, this Revision Application is filed under Section 29(2) of the Bombay Rent Act and this Court has a very limited jurisdiction. For that purpose, I rely on the following decisions of the Hon'ble Supreme Court, namely:-

(i) PHIROZE BAMANJI DESAI VS. CHANDRAKANT M. PATEL reported in AIR 1974 SC 1059 particularly para 6 on page 1063 in which it is observed by the Hon'ble Supreme Court thus:

> “xxxxxxx The High Court can, therefore, interfere with the decision of the lower Court under Section 29, sub-section (3) only if there is miscarriage of justice due to a mistake of law. The High Court cannot

reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower Court is wrong and the lower Court should have reached a different conclusion of fact from what it did: In other words, the High Court cannot re-appreciate the evidence and substitute its own conclusions of fact in place of those reached by the lower Court. Bearing in mind this limited scope and ambit of the revisional power of the High Court under S. 29, sub-sec. (3) we may now proceed to consider whether the High Court acted within its jurisdiction in setting aside the decision of the District Judge."

(ii) GIRDHARBHAI VS. SAIYED MOHMAD MIRASAHEB KADRI reported in AIR 1987 SC 1782 particularly paragraph No. 16 on pages 1788-1789.

16. In view of the aforesaid discussion, I do not find any substance in the contentions raised by

the learned advocate for the petitioners whereas I find substance in the arguments of the learned advocate for the respondents. So the grounds on which the trial Court as well as the appellate Court has given the findings are upheld. Under Section 29(2) of the Bombay Rent Act, this Court has got a very limited jurisdiction. Therefore, this Civil Revision Application requires to be rejected.

17. In the result, the Civil Revision Application is rejected. No order as to costs.

(K.M. MEHTA, J)

(pkn)